IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5064 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KURNAL OIL MARKETING PVT. LTD. - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 20/01/2006

ORAL JUDGMENT

By way of this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order

dated 30th April 1999 passed by the State Government, revisional authority in dismissing the said appeal confirming the order of confiscation passed by the respondent No.2, District Collector, Ahmedabad, dated 27.1.1997.

2. The petitioner was having licence, i.e., commercial licence to deal in commodity of edible oil etc., under the provisions of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. It appears from the record that on 15.10.1996 the officers from the office of Director, Civil Supplies Department, Gandhinagar, carried out surprise inspection at the business place of the petitioner pursuant to which a show cause notice came to be issued on 26.12.1996 after seizure of even the goods, i.e., edible oil, Raida, refined oil etc., worth Rs. 5,23,940, and the petitioner was directed to show cause why the aforesaid goods should not be confiscated to the State Government. It was alleged in the show cause notice that the Stock Register is not properly maintained at the place of business, though the plant and machinery was found to have been

closed, it was found that since last 3 months the petitioner was carrying on the business of selling the edible oil of Madhur, Kesar and Gopal brands. Thus the petitioner has committed irregularities and illegalities. It was also alleged that certain goods which were found were not mentioned in the Stock Register of 13.10.1996 which was done deliberately and that if the same would have been mentioned in the Stock Register of 13.10.1996 then it was likely that it would have shown more than the prescribed limit and therefore it was alleged that the same was not mentioned deliberately in the Stock Register of 13.10.1996. It was also alleged that the edible oil was found less than what was found less. It was alleged that the edible oil is mainly purchased from one Saujanya Enterprise of Satlasna. However it is found that the said Saujanya Enterprise is permanently closed. There were certain other irregularities also mentioned in the show cause notice. The petitioner replied to the said show cause notice dated 7.1.1997 and after considering the reply submitted by the petitioner, the Collector, Ahmedabad, partly accepted the explanation given by

the petitioner with regard to Charges No. 1 and 2 and did not accept the explanation with regard to Charges No. 3, 4, 5, 6, 7 and 8, and therefore considering the same passed the order of confiscating 50% of the goods seized, i.e., confiscation of goods worth Rs. 2,61,979. Being aggrieved and dissatisfied with the order passed by the Collector, Ahmedabad, dated 27.1.1987 in confiscating the goods worth Rs. 2,61,979, the petitioner preferred appeal before the State Government and the State Government further reduced the penalty from confiscation of 50% of the goods to 25% of confiscation of goods. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri HR Prajapati, learned advocate appearing for the petitioner has vehemently submitted that the Collector, Ahmedabad as well as Appellate Authority have materially erred in imposing penalty of confiscation of the goods. He has submitted that even confiscation of 25% of the goods by the

Appellate Authority is not justified in the facts and circumstances of the case. He has submitted that the charges which are proved against the petitioner are all technical in nature for which penalty of confiscation of 25% of the goods which approximately comes to Rs. 1,25,000 was not warranted. He has relied upon the Judgment of this Court in the case of Devikadevi, Wife of Premjibhai Ruparel Vs. State of Gujarat & Anr., reported in 1983 (1) GLR 215 in support of his above submission.

4. Ms. Archana Raval, learned AGP, while supporting the order passed by both the authorities below, more particularly of the Appellate Authority, has submitted that even considering the submission made on behalf of the petitioner the Appellate Authority has further reduced penalty from 50% to 25% and the same being just and proper in the facts and circumstances of the case it is not required to be interfered by this Court in its exercise of power under Article 226/227 of the Constitution of India.

5. Heard the learned advocates appearing on behalf of the petitioner. The main contention on behalf of the petitioner seems to be that the charges which are proved against the petitioner even if they are held to be proved are of technical in nature and therefore the confiscation of the goods to the extent of 25% which comes to approximately Rs. 1,25,000 is too harsh. I have gone through the charges which are proved against the petitioner by the Collector, Ahmedabad as well as the Appellate Authority. It cannot be said that that breaches are technical in nature. There are concurrent findings given by both the authorities below against the petitioner. It is required to be noted that the first authority, i.e., Collector passed the order of confiscation of 50% of the goods seized and the same came to be further reduced by the appellate authority to 25% of the goods seized, which, in the facts and circumstances of the case, cannot be said to be in any way arbitrary, or illegal and/or without jurisdiction which requires interference by this Court exercising power under Article 226/227 of the Constitution of India. It is required to be noted that this Court is

not sitting as appellate authority against the order passed by both the authorities below. What is required to be considered by this Court mainly is whether sufficient opportunity is given to the petitioner or not and/or the impugned order is in consonance with the evidence on record or not. It appears from the record that fullest opportunity was given to the petitioner and after considering the submissions made on behalf of the petitioner, the first authority passed the order of confiscation of 50% of the goods seized, which came to be further reduced to 25% of the goods seized. Under the circumstances, no interference of this Court is called for.

6. For the reasons stated above, the petition fails. Rule is discharged, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.